

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

9292

FILE: B-194054

DATE: February 22, 1979

MATTER OF: Klean-Vu-Maintenance, Inc. - DLG01017

**DIGEST:**

1. Bid which was not accompanied by bid guarantee as required by invitation for bids (IFB) is nonresponsive even if bidder's failure to submit bid guarantee prior to bid opening was due to erroneous advice of agency personnel since IFB stated that oral explanations were not binding and erroneous advice given by agency personnel cannot act to estop agency from rejecting nonresponsive bid as it is required to do so by law.
2. When it is clear from initial submission that protest is without legal merit, decision will be rendered without benefit of agency report.

Klean-Vu-Maintenance, Inc. (Klean-Vu) has protested the rejection of its bid for cleaning and waterproofing work on the Peter Rodino Federal Building, Newark, *AG-C00488* New Jersey by the General Services Administration (GSA) because of its failure to submit a bid guarantee prior to bid opening as required by the invitation for bids (IFB). Klean-Vu alleges that it did not submit a bid guarantee with its bid because a GSA employee erroneously told a representative of Klean-Vu by telephone that Klean-Vu would have sixty days after bid opening in which to submit a bid guarantee.

A bidder's failure to submit a bid guarantee prior to bid opening as required by an IFB renders a bid nonresponsive and usually the bid must be rejected. Newport Ship Yard, Inc., B-191703, May 25, 1978, 78-1 CPD 400, and cases cited therein. The failure to submit a bid guarantee prior to bid opening cannot be waived except under circumstances which are not

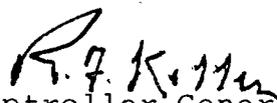
[Bid Not Accompanied by <sup>REQUESTED</sup> Bid Guarantee IS <sub>003876</sub> Nonresponsive] *per*

indicated here. See Federal Procurement Regulations (FPR) § 1-10.103-4 (1964 ed. amend. 184). Since the circumstances enumerated in FPR § 1-10.103-4 are not present in this case, GSA had no choice other than to reject Klean-Vu's bid.

Klean-Vu alleges that it was told by a GSA employee that it did not have to submit a bid guarantee prior to bid opening. However, paragraph 1 of Standard Form 22, "Instructions to Bidders", included as part of the IFB, clearly stated that oral explanations or instructions given before the award of the contract would not be binding and that any explanation desired by a bidder regarding the meaning or interpretation of the IFB must be requested in writing and with sufficient time allowed for a reply to be rendered (in writing) prior to bid opening. Since Klean-Vu did not do so, we think it must suffer the consequences of its reliance upon any erroneous advice of a GSA employee. CFE Air Cargo, Inc., B-185515, August 27, 1976, 76-2 CPD 198. Furthermore, erroneous advice given by agency personnel cannot act to estop an agency from rejecting a nonresponsive bid as it is required to do so by law. CFE Air Cargo, supra.

Because we believe it was clear from Klean-Vu's initial submission that its protest was without legal merit, this decision has been reached without benefit of a report from GSA. See Inflated Products Company, Inc., B-190877, May 11, 1978, 78-1 CPD 362.

The protest is summarily denied.

  
Deputy Comptroller General  
of the United States